

# **MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION**

**October 24, 2006**

**The Rhode Island Ethics Commission held its 19th meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, October 24, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**James Lynch, Sr., Chair   James V. Murray**

**Barbara Binder, Vice Chair   Richard E. Kirby**

**George E. Weavill, Jr., Secretary   James C. Segovis\***

**Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason M. Gramitt, Staff Attorney/Education Coordinator; Staff Attorney Dianne Leyden and Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.**

**At approximately 9:10 a.m., the Chair opened the meeting. At the Chair's request, H. Philip West introduced Christine Lopez, who will succeed him as Common Cause's Executive Director next month.**

**The first order of business was to approve the minutes of the Open Session held on September 26, 2006. Upon motion made by Commissioner Binder and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To approve the minutes of the Open Session held on September 26, 2006.**

**The next order of business was to extend time to approve the minutes of the Open Session held on October 10, 2006. Upon motion made by Commissioner Murray and duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To extend time to approve the minutes of the Open Session held on October 10, 2006.**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.**

**The first advisory opinion was that of David M. D'Amico, P.E., Chairman of the Johnston Planning Board. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner was present.**

**\*Commissioner Segovis arrived at 9:18 a.m.**

**In response to Commissioner Binder, the petitioner informed that the Building Official has not appeared before the Board in his six years of service and the Board does not really look at municipal infrastructure projects. He added that the Town Planner, who is supervised by the Mayor, administers the Planning Board. In response to Chair Lynch, he stated that the Planning Board does not provide the Council with input regarding hiring the consultant. Commissioner Kirby disclosed that he has previously represented clients with business with Casali but believes he can fairly participate.**

**Commissioner Weavill inquired why the consulting arrangement was for a review, not actual construction. The petitioner replied that the Town does not have the staff and expertise to review a septic project of this magnitude, where construction costs alone could run close to five million dollars. He advised that the Town did not previously complete the project because it is the most difficult portion of the Town to handle due to technical challenges. He indicated that the Town needs someone with expertise to review the plans as they come in and monitor the budget. In further response to Commissioner Weavill, the petitioner stated that Cataldo could appear before the Planning Board but stated his belief that he could be objective since he would be reviewing them on a municipal project.**

Commissioner Weavill cautioned regarding actual or perceived conflicts and noted that in the past the petitioner had recused himself when he was a Cataldo employee. The petitioner represented that he would recuse if the Commission believes it to be proper. Commissioner Weavill asked if the petitioner would control or approve the flow of funds to Cataldo. The petitioner replied that he would only offer his opinion as guidance. Commissioner Kirby urged the petitioner to look at the projects he worked on as an employee to determine if any are still ongoing and examine whether he would be entitled to residuals on any of them. The petitioner advised that he does not receive a pension or any other benefits and is presently at a new firm. He reiterated that if the Commission believes that he should recuse himself for one year, he would do so. Commissioner Weavill expressed that it would be safer for him to do so and avoid the appearance of impropriety. Upon motion made by Commissioner Binder and duly seconded by Commissioner Kirby, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to David M. D'Amico, P.E., Chairman of the Johnston Planning Board.

The next advisory opinion was that of Curtis Ponder, a member of the Cranston Zoning Board of Review. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner was not present. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

**VOTED: To issue an advisory opinion, attached hereto, to Curtis Ponder, a member of the Cranston Zoning Board of Review.**

**The next advisory opinion was that of Michael T. Beauparlant, a member of the Zoning Board of the City of East Providence. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was not present. Upon motion made by Commissioner Binder and duly seconded by Commissioner Kirby, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Michael T. Beauparlant, a member of the Zoning Board of the City of East Providence.**

**The next advisory opinion was that of James W. Archer, the Chairperson of the Smithfield Planning Board. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was not present. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Kirby, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to James W. Archer, the Chairperson of the Smithfield Planning Board.**

**At approximately 9:42 a.m., upon motion made by Commissioner Weavill and duly seconded by Commissioner Kirby, it was**

**unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(4), to wit:**

**a.) Motion to approve minutes of Executive Session held on September 26, 2006.**

**b.) Motion to extend time to approve minutes of Executive Session held on October 10, 2006.**

**At approximately 9:44 a.m. the Commission reconvened in Open Session.**

**Chair Lynch reported that in Executive Session the Commission voted to approve the minutes of the September 26, 2006 Executive Session extend time to approve minutes of the Executive Session held on October 10, 2006.**

**The next order of business was discussion of proposed regulatory actions regarding Nepotism & Revolving Door. Staff Attorney Gramitt advised that the Staff has sent letters to approximately 400 municipal officials, and the League of Cities and Towns, soliciting their comments on the municipal revolving door proposal. Responses will be provided to the Commission in advance of the November 14th meeting. Staff Attorney Gramitt outlined changes made to the draft nepotism regulation, noting that subsection 3(b) requires an advisory**

opinion from the Commission in order to participate in a budgetary line item and subsection 3(c) allows participation in an entire budget vote if the class exception applies. He explained that subsection 4(a) also permits voting on an entire contract if the class exception applies, without the need to seek an opinion.

Commissioner Weavill questioned what standards the Commission would apply in permitting exceptions through an advisory opinion. The Commission discussed the general standards as to class exceptions and reviewing matters on a case by case basis. Commissioner Kirby suggested that they might be able to utilize an appearance of impropriety standard given that it would be in an advisory context. Staff Attorney Gramitt stated his belief that they could use that standard, but cautioned that it could be challenged. He noted that the new language requires the person to obtain an opinion, and if the Commission cannot issue an opinion for any reason, due to lack of quorum or lack of five affirmative votes, the person is not able to participate. Commissioner Kirby suggested that they apply a higher standard in the advisory context. Legal Counsel Managhan advised that the class exception should be applied based upon the particular facts.

Staff Attorney Gramitt pointed out that the draft language paraphrases the statutory language of section 7(b) to make it more readable for the public. Commissioner Segovis asked if the members were going to consider the Louisiana nepotism statute and whether

there is a need to include language regarding family members of school boards and superintendents. Staff Attorney Gramitt stated that the Commission presently handles these issues in an advisory context and discussed the opinion issued to Mary Canole. Chair Lynch indicated that he did not see a need to go further.

Commissioner Kirby asked if anyone has addressed the legislature regarding the issue of financial disclosure statements requiring the listing of minor children, when the concern should really be as to adult children. Staff Attorney Gramitt replied that the General Assembly has always determined what it required on the financial statement, but the Commission could impose further requirements. Chair Lynch expressed his support for looking into this issue in the future. H. Philip West of Common Cause addressed the Commission and affirmed Commissioner Kirby's observation and agreed the Commission has jurisdiction to regulate this area. In response to Chair Lynch, Senior Staff Attorney D'Arezzo explained the timetable for printing the 2006 financial statements, which January 2007 appointees must file within thirty days of appointment.

**\*Commissioner Murray left the meeting at 10:00 a.m.**

The consensus of the Commission was to address financial disclosure requirements after completing the nepotism and revolving door issues. Senior Staff Attorney D'Arezzo reiterated prior concerns regarding proposed Regulation 5016 having the unintended



consequences of precluding legal counsel to the Governor from being hired as an attorney on a matter for the next administration, due to its broader definition of employment. She noted that the Commission could choose to add the broader definition to existing Regulation 5007, but noted that the provision only applies to legislators, not all state elected officials. Alternatively, she suggested that the Commission could rely on the subsections to sections 5(n) and 5(o), which allow the Commission to grant exceptions where it would not result in an appearance of impropriety.

Chair Lynch suggested that the proposal be left as it is and the Commission grant exceptions as allowed by statute. Commissioners Segovis and Kirby concurred. Commissioner Weavill stated that the Commission needs to know how far the prohibition would apply, such as whether it prohibits former prosecutors in the Attorney General's Office from being hired as special prosecutors. Senior Staff Attorney D'Arezzo replied that the Staff would review the implications and comment at the next meeting. Commissioner Kirby suggested that the review not be limited to attorneys and noted that Treasury employees could be hired as consultants as well.

The next order of business was an update on Financial Disclosure-Operation Compliance. Chief of Investigations Steven T. Cross advised of the efforts to increase compliance since 2001, which have included reminder letters, notifications to solicitors and DMV record checks. He reported that in 2001 the compliance rate was 43%.

Investigator Cross advised that Staff member Lisa Petrone receives, processes and files the statements, and Investigators Mike Douglas and Peter Mancini contact the solicitors and maintain backup files. After legislative changes in 2004, 3,969 people were required to file for 2005. He reported that 3,734 have filed their 2005 statements, and of the 235 non-filers, 43% are municipal officials and 66% are state officials.

Investigator Cross informed that just over 90% of those required to file did so for 2004, but that figure is up to 94% for 2005. He advised that the Staff initiated 13 non-filing complaints this year, all of which have been resolved. Investigator Cross emphasized the importance of the financial disclosure statements, and Commission records in general, in ongoing state and federal corruption probes. Chair Lynch was joined by the entire Commission in applauding the efforts of Staff in this area.

In response to Commissioner Weavill, Staff Attorney Gramitt advised that the Staff notified municipalities of the new standards passed in 2004 and the municipalities are making determinations and informing the Commission. On the state side, he indicated that the Staff contacted officials listed in the State Government Owner's Manual and asked to be informed as to who must file from their public bodies. Staff Attorney Gramitt stated that the Staff received a good response and continues to handle some questions regarding specific situations.

The next order of business was the Director's Report. Executive Director Willever informed that Commissioner Cheit appeared on Jim Taricani's weekly news program on October 22nd to discuss corruption and ethics in Rhode Island. He suggested that discussion of use of audio recording equipment be deferred until all members are present. Commissioner Weavill inquired why the Commission was not using the device, since it had been purchased. Executive Director Willever recalled that the Commission first wanted to collectively consider issues regarding its use. Senior Staff Attorney D'Arezzo added that the Commission had delayed implementing it until the full membership could establish guidelines for its use and a record retention policy.

Chair Lynch asked the Staff to begin using the device at the next meeting, which will prompt discussion. Commissioner Segovis suggested that the Commission start with a simple approach of recording the meetings and retaining the backup until the minutes are approved. The consensus was to begin recordation on November 14th. In response to Commissioner Weavill, Executive Director Willever stated that there are 7 complaints and 6 advisory opinions pending.

The next order of business was New Business. There being none, at approximately 10:43 a.m., upon motion made by Commissioner Kirby and duly seconded by Commissioner Segovis, it was unanimously

**VOTED: To adjourn the meeting.**

**Respectfully submitted,**

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**George E. Weavill, Jr.**  
**Secretary**